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September 20, 2007

By Electronic Filing

Marlene H. Dortch
Secretary
Federal Communications Commission
236 Massachusetts Ave, N.E
Suite 110
Washington, DC 20002

*Re: Notice of ex parte Oral Presentation Relating to
Implementation of the Pay Telephone
Reclassification and Compensation Provisions
of the Telecommunications Act of 1996
CC Docket 96-128*

Dear Ms. Dortch:

Pursuant to § 1.1206 of the Commission's rules, 47 CFR 1.1206, the Payphone Association of Ohio ("PAO"), hereby provides notice of an oral *ex parte* presentation relating to the above-captioned matter. On September 18, 2007, Messrs. Howard Meister and Mark Higgins of the Payphone Association of Ohio appeared together with Neil Ende and Greg Taylor of Technology Law Group, counsel to PAO. Attending on behalf of the Commission were, Tamara Preiss and Diane Griffin, of the Office of General Counsel, and Al Lewis, Pamela Arluk and Lynne Engledow, of the Pricing and Policy Division.

PAO discussed generally with Commission staff, the December 28, 2006 Petition of the Payphone Association of Ohio to Preempt and for a Declaratory Ruling, Comments from other parties on PAO's Petition, PAO's February 20, 2007 Reply Comments, the Public Utilities Commission of Ohio's proceedings and orders, the Supreme Court of Ohio's ruling, various FCC orders and the implications of each of these matters on the instant proceedings.

In the course of the discussions regarding the above issues, PAO also presented and the participants discussed the implications of several documents (attached hereto) to this proceeding and to the 10th Circuit's recent decision in *TON Services v. Qwest Communications*.

97-0545-17-0052
Under Sign.

150 East Gay Street
Room 19-44
Columbus, OH 43215-3111

Ameritech

May 16, 1997

NOTE: CONFIDENTIAL ENCLOSURES

Roger Montgomery
Telecommunications Division
Public Utilities Commission of Ohio
180 East Broad Street, 3rd Floor
Columbus, Ohio 43215-3793

TELECOMMUNICATIONS
FCC

MAY 16 1997

RECEIVED

Re: Pay Telephone Tariffs

Dear Mr. Montgomery:

Transmitted with this letter are cost support materials relating to the COCOT-Coin Line and COCOT Line tariffs of Ameritech Ohio.

These materials, along with other materials being filed concurrently (copies of which are also being provided to you), are submitted under the pay telephone provisions of Section 276 of the Telecommunications Act of 1996 and the orders of the Federal Communications Commission ("FCC") implementing that law in its CC Docket No. 96-128. There, the FCC has required Local Exchange Carriers (among other things) to file certain tariffs with state regulatory commissions in order that the LECs' affiliated payphone operations may become eligible to receive payphone compensation from interexchange carriers. To the extent that such tariffs did not already exist, the above-named tariffs were originally filed with this commission under such FCC orders and pursuant to the applicable provisions of Advantage Ohio.

In the more recent Order of the Chief, Common Carrier Bureau, released April 15, 1997, the FCC has clarified the intent of its earlier orders to require that the LECs' state tariffs meet the "new services test" set out in the FCC's rules at 47 C.F.R. 61.49(g)(2), without regard to whether any of the services were actually "new" services. The enclosed materials are intended to cure any technical defects in that regard.

As reflected in the FCC's April 15 Order, Ameritech Ohio has agreed that if state commissions, upon reviewing these new materials concerning the "new services test," require any

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Roger Montgomery
May 16, 1997
Page 2

tariff rates to be revised downward, Ameritech Ohio will make refunds of those rates back through April 15, 1997. However, Ameritech Ohio believes that the above-listed tariffs met the FCC's new services test at the time of such tariffs' filing and that the documentation accompanying this letter, had it been submitted at that time, would have fully demonstrated their compliance. Therefore, the further documentation does not result in any change in the existing rates in those tariffs. Consequently, it will not be necessary for this Commission to take any further action. Indeed, the FCC's April 15 Order, in Paragraph 8, specifically contemplates that state commissions may conclude that existing tariffs are consistent with the requirements of Section 276 and the FCC's several orders and that "in such case no further filings are required."

These cost studies are submitted to you on a proprietary basis, as is customary in the case of such cost studies.

Thank you for your attention to this matter. Please contact at 614/223-5930 if you have any questions.

Very truly yours,

Vitas R. Cyvas
Vitas R. Cyvas

Enclosures

7-11-99

10

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

RECEIVED-DOCKETING

99 FEB 22 PM 4:

PUCO

In the Matter of the Commission's Investigation)
Into the Implementation of Section 276 of the)
Telecommunications Act of 1996)
Regarding Pay Telephone Services.)

Case No. 96-1310-TP-COI

AT&T's ISSUES LIST

On February 2, 1999, the Commission issued an entry granting the Payphone Association of Ohio's (PAO) motion for an evidentiary hearing in regard to issues surrounding § 276 of the 1996 Telecommunications Act. In addition, the Commission scheduled a prehearing conference held on February 11, 1999. At that conference, the Attorney Examiner directed each party to submit an "Issues List," on or before February 22, 1999, identifying the issues each party believes should be addressed in this proceeding. By this pleading, AT&T Communications of Ohio, Inc. (AT&T) submits its list of issues.

Background

The 1996 Act requires the FCC to prescribe regulations which promote competition among payphone service providers and promote the widespread deployment of payphone service to the benefit of the general public. Specifically, Section 276(b) directs the FCC to:

(A) establish a per call compensation plan to ensure that all payphone service providers are fairly compensated for each and every completed intrastate and interstate call using their payphone . . .

(B) discontinue the intrastate and interstate carrier access charge payphone service elements and payments in effect on such date of enactment, and all intrastate and interstate payphone subsidies from basic exchange and exchange access revenues, in favor of a compensation plan as specified in subparagraph (A);

This is to certify that the images appearing are an accurate and complete reproduction of a case file document delivered in the regular course of business.
Technician Jean Schaefer Date Processed 2-23-99

(C) prescribe a set of nonstructural safeguards for Bell operating company payphone service to implement the provisions of paragraphs (1) and (2) of subsection (a) of this section, which safeguards shall at a minimum, include the nonstructural safeguards equal to those adopted in the Computer Inquiry-III (CC Docket No. 90-623) proceeding.

47 U.S.C. § 276(b).

Acting on this grant of authority, the FCC has held that prices for network services must be based on a relationship to the costs associated with the service in order to promote competition in the payphone industry. Thus, the FCC implemented the New Services Test as the standard to assure that intrastate rates are cost-based. . FCC Report and Order CC Docket 96-128, 96-388 dated September 20, 1996; FCC Order on Reconsideration, 96-439 dated November 8, 1996; 47 C.F.R. § 61.49. The New Services Test requires unbundled features and functions which are cost-based and nondiscriminatory and based on Computer III tariffing guidelines. Essentially, the New Services Test establishes that network access services be priced at a level not greater than the TSLRIC of the service plus a reasonable allowance for overhead expenses. 47 C.F.R. § 61.49(g)(2).

The FCC clearly places the burden of proof on LECs to show that the service elements in the payphone tariff are cost-based and do not recover more than a reasonable portion of the overhead costs in compliance with the New Services Test. 47 C.F.R. § 61.49. The FCC states that each tariff filing in compliance with the New Services Test must include cost data sufficient to show the recovery is not more than a reasonable portion of the carriers overhead. 47 C.F.R. §61.49(g)(2); FCC Order CC Docket No. 93-129, dated October 28, 1996. Thus, whatever issues the Commission might decide to

address in this § 276 investigation, it must make it perfectly clear that the incumbent LECs bear the burden of proving compliance with § 276.

Issues List

Based on this background, AT&T provides the following list of issues that should be considered in this proceeding. In the first instance, however, AT&T notes that it does not offer this list as an all-inclusive list of issues that must be addressed in this proceeding. In fact, AT&T would expect that the various parties to this case, representing varying interests, would offer differing, yet wholly reasonable, issues.

Based on the plain terms of § 276, the FCC's rules and orders implementing that section, and the Commission's February 2, 1999 Entry, AT&T believes the following issues must be addressed in this case:

1. Whether LECs subsidize any of their own payphone services with revenue derived from business or residential services provided to the LEC's end-users or from access services provided to toll providers. Specifically, this must include an investigation into whether the LEC's retail payphone operations are subsidized by other exchange or exchange access services.
2. Whether LECs provide cost-based rates in local exchange services pursuant to the New Services Test.
3. Whether the quality of the local exchange service provided by the LECs to IPPs permit the IPPs to compete on an equal basis with the payphones owned by the LECs or their affiliated payphone providers.

4. Whether the LEC's submitted cost studies comply with the forward-looking standards for determining direct costs already approved in PUCO Case No. 96-922-TP-UNC and the Commission's 845 Guidelines.

5. Whether the LEC's, in certifying compliance with the New Services Test, used an appropriate methodology for calculating a reasonable portion of overhead for purposes of the New Services Test, and, if so, whether any such proposed overhead allocation methodology should differ from that already approved in PUCO Case No. 96-922-TP-UNC and the Commission's 845 Guidelines.

6. Should the LECs End-User Common Line Charge revenue (if any) be deducted in order to establish a rate for exchange services provided to payphone providers.

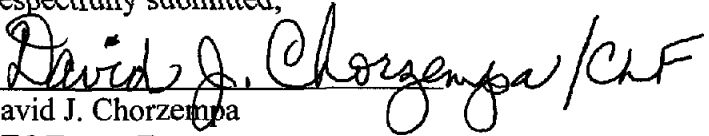
7. Since the effective date of the rates under the New Services Test is April 15, 1997, the Commission must establish the LEC's obligation to reimburse or provide credit to its customers for payphone services from April 15, 1997 to implementation.

AT&T notes that each of these issues were addressed in the recently concluded hearing in the Michigan payphone case. MSPC Case No. U-11756. In fact, on February 12, 1999, the ALJ in that matter submitted a proposed order finding that (i) Ameritech and GTE have not complied with the New Services Test; and (iii) Ameritech and GTE discriminate in the offer of payphone service. Since GTE and Ameritech have filed almost identical cost studies in this case, AT&T believes the evidence here will likely lead the Commission to the same conclusions.

AT&T looks forward to participating in this docket and addressing the above-noted issues.

Dated: February 22, 1999

Respectfully submitted,

/CHF

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CERTIFICATE OF SERVICE

I, Cova Freeman, certify that on February 22, 1999, I caused a copy of the foregoing Issues List to be served on the parties by U.S. regular mail or by facsimile as designated on the attached service list.


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*Copy served on these parties via facsimile

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April 10, 1997

Ex Parte Filing

Mary Beth Richards
Deputy Bureau Chief
Common Carrier Bureau
Federal Communications Commission
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Washington, D.C. 20554

In re Implementation of the Pay Telephone
Reclassification and Compensation Provisions
of the Telecommunications Act of 1996,
CC Docket No. 96-128

Dear Mary Beth:

I am writing on behalf of the RBOC Payphone Coalition to request a limited waiver of the Commission's intrastate tariffing requirements for basic payphone lines and unbundled features and functions, as set forth in the Commission's Orders in the above-captioned docket. I am also authorized to state that Ameritech joins in this request.

As we discussed yesterday, and as I explained in my Letter of April 3, 1997, none of us understood the payphone orders to require existing, previously-tariffed intrastate payphone services, such as the COCOT line, to meet the Commission's "new services" test. It was our good faith belief that the "new services" test applied only to new services tariffed at the federal level. It was not until the Bureau issued its "Clarification of State Tariffing Requirements" as part of its Order of April 4, 1997, that we learned otherwise.

In most States, ensuring that previously tariffed payphone services meet the "new services" test, although an onerous process, should not be too problematic. We are gathering the relevant cost information and will be prepared to certify that those tariffs satisfy the costing standards of the "new services" test. In some States, however, there may be a discrepancy between the existing state tariff rate and the "new services" test; as a result, new tariff rates may have to be filed. For example, it appears that, in a few States, the existing state tariff rate for the COCOT line used by independent PSPs may be

KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C.

Mary Beth Richards
April 10, 1997
Page 2

too low to meet the "new services" test and will therefore have to be raised.

In order to allow deregulation to move forward and ensure that LEC PSPs are able to compete on a level playing field starting, as planned, on April 15, 1997, we propose that the limited waiver issued by the Commission on April 4 for interstate tariffs apply to intrastate payphone tariffs as well. Specifically, we request that the Commission grant us 45 days from the April 4th Order to file new intrastate tariffs, in those States and for those services where new tariffs are required. Each LEC will undertake to file with the Commission a written ex parte document, by April 15, 1997, attempting to identify those tariff rates that may have to be revised.

Unlike with federal tariffs, there is of course no guarantee that the States will act within 15 days on these new tariff filings, particularly where rates are being increased pursuant to federal guidelines. Provided, however, that we undertake and follow-through on our commitment to ensure that existing tariff rates comply with the "new services" test and, in those States and for those services where the tariff rates do not comply, to file new tariff rates that will comply, we believe that we should be eligible for per call compensation starting on April 15th. Once the new state tariffs go into effect, to the extent that the new tariff rates are lower than the existing ones, we will undertake to reimburse or provide a credit to those purchasing the services back to April 15, 1997. (I should note that the Filed-rate doctrine precludes either the state or federal government from ordering such a retroactive rate adjustment. However, we can and do voluntarily undertake to provide one, consistent with state regulatory requirements, in this unique circumstance. Moreover, we will not seek additional reimbursement to the extent that tariff rates are raised as a result of applying the "new services" test.)

The LECs thus ask the Commission to waive the requirement that effective intrastate payphone tariffs meet the "new services test," subject to three conditions: (1) LECs must file a written ex parte with the Commission by April 15, 1997, in which they attempt to identify any potentially non-compliant state tariff rates, (2) where a LEC's state tariff rate does not comply with the "new services" test, the LEC must file a new state tariff rate that does comply within 45 days of the April 4, 1997 Order, and (3) in the event a LEC files a new tariff rate to comply with the "new services" test pursuant to this waiver, and the new tariff rate is lower than the previous tariff rate as a result of applying the "new services" test, the LEC will undertake

KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C.

Mary Beth Richards
April 10, 1997
Page 3

(consistent with state regulations) to provide a credit or other
~~compensation to purchasers back to April 15, 1997.~~

The requested waiver is appropriate both because special circumstances warrant a deviation from the general rule and because the waiver will serve the public interest. Because the federal "new services" test has not previously been applied to existing state services -- and because the LECs did not understand the Commission to be requiring such an application of the test until the Commission issued its clarification order just a few days ago -- special circumstances exist to grant a limited waiver of brief duration to address this responsibility. In addition, granting the waiver in this limited circumstance will not undermine, and is consistent with, the Commission's overall policies in CC Docket No. 96-128 to reclassify LEC payphone assets and ensure fair PSP compensation for all calls originated from payphones. And competing PSPs will suffer no disadvantage. Indeed, the voluntary reimbursement mechanism discussed above -- which ensures that PSPs are compensated if rates go down, but does not require them to pay retroactive additional compensation if rates go up -- will ensure that no purchaser of payphone services is placed at a disadvantage due to the limited waiver.

Accordingly, we request a limited waiver, as outlined above, of the Commission's intrastate tariffing requirements for basic payphone lines and unbundled features and functions.

We appreciate your urgent consideration of this matter. Copies of this letter have been served by hand on the APCC, AT&T, MCI and Sprint.

Yours sincerely,


Michael K. Kellogg

cc: Dan Abeyta	Christopher Heimann	Brent Olson
Thomas Boasberg	Radhika Karmarkar	Michael Pryor
Craig Brown	Regina Keeney	James Schlichting
Michelle Carey	Grinda Kinney	Blaise Scinto
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April 11, 1997

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Washington, D.C. 20554

In re Implementation of the Pay Telephone
Reclassification and Compensation Provisions
of the Telecommunications Act of 1996,
CC Docket No. 96-128

Dear Mary Beth:

This letter will clarify the request I made yesterday on behalf of the RBOCs for a limited waiver of the Commission's intrastate tariffing requirements for basic payphone lines and unbundled features and functions.

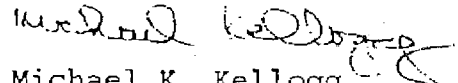
To the best of my knowledge, all the RBOCs have (or will by April 15, 1997, have) effective state tariffs for all the basic payphone lines and unbundled features and functions required by the Commission's order. We are not seeking a waiver of that requirement. We seek a waiver only of the requirement that those intrastate tariffs satisfy the Commission's "new services" test. The waiver will allow LECs 45 days (from the April 4 Order) to gather the relevant cost information and either be prepared to certify that the existing tariffs satisfy the costing standards of the "new services" test or to file new or revised tariffs that do satisfy those standards. Furthermore, as noted, where new or revised tariffs are required and the new tariff rates are lower than the existing ones, we will undertake (consistent with state requirements) to reimburse or provide a credit back to April 15, 1997, to those purchasing the services under the existing tariffs.

KELLO G6, HUBER, HANSEN, TODD & EVANS, P.L.L.C.

Mary Beth Richards
April 11, 1997
Page 2

~~I hope this clarification is helpful. Copies of this letter~~
have been served by hand on the APCC, AT&T, MCI and Sprint.

Yours sincerely,


Michael K. Kellogg

cc: Dan Abeyta
Thomas Boasberg
Craig Brown
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and ONA⁴⁴⁹ network information disclosure requirements, the Commission waived the notice period in order to ensure that these services are provided on a timely basis consistent with the other deregulatory requirements of the order.⁴⁵⁰ Pursuant to this waiver, network information disclosure notification on the basic network payphone services must be made by the BOCs by January 15, 1997 for services to be provided by April 15, 1997.

147. The Report and Order required that tariffs for payphone services must be filed with the Commission as part of the LECs' access services to ensure that the services are reasonably priced and do not include subsidies. Because, Section 276 specifically refers to the application of Computer III and ONA requirements, at a minimum for BOC provision of payphone services, we concluded that Computer III tariff procedures and pricing are appropriate for basic payphone services provided by LECs to other payphone providers. Pursuant to Section 276(c), any inconsistent state requirements with regard to this matter are preempted.

148. The Report and Order declined to require additional unbundling of network elements for payphone service for all LECs. We found that such unbundling is not necessary to provide payphone services and that some features require substantial costs to make switch changes. Moreover, the Report and Order noted that, pursuant to Computer III and ONA requirements, BOCs must unbundle additional network elements when requested by payphone

further recon., 4 FCC Rcd 5927 (1989) (Phase II Further Reconsideration Order); Phase II Order vacated, California I, 905 F.2d 1217 (9th Cir. 1990); Computer III Remand Proceeding, 5 FCC Rcd 7719 (1990) (ONA Remand Order), recon., 7 FCC Rcd 909 (1992), pets. for review denied, California v. FCC, 4 F.3d 1505 (9th Cir. 1993) (California II); Computer III Remand Proceedings: Bell Operating Company Safeguards and Tier 1 Local Exchange Company Safeguards, 6 FCC Rcd 7571 (1991) (BOC Safeguards Order), BOC Safeguards Order vacated in part and remanded, California v. FCC, 39 F.3d 919 (9th Cir. 1994) (California III), cert. denied, 115 S.Ct. 1427 (1995). See also Bell Operating Companies' Joint Petition for Waiver of Computer II Rules, Memorandum Opinion and Order, 10 FCC Rcd 1724 (1995); Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services, 10 FCC Rcd 8360 (1995).

⁴⁴⁹ Filing and Review of Open Network Architecture Plans, 4 FCC Rcd 1 (1988) (BOC ONA Order), recon., 5 FCC Rcd 3084 (1990) (BOC ONA Reconsideration Order); 5 FCC Rcd 3103 (1990) (BOC ONA Amendment Order), erratum, 5 FCC Rcd 4045, pets. for review denied, California v. FCC, 4 F.3d 1505 (9th Cir. 1993), recon., 8 FCC Rcd 97 (1993) (BOC ONA Amendment Reconsideration Order); 6 FCC Rcd 7646, 7649-50 (1991) (BOC ONA Further Amendment Order); 8 FCC Rcd 2606 (1993) (BOC ONA Second Further Amendment Order), pet. for review denied, California v. FCC, 4 F.3d 1505 (9th Cir. 1993).

⁴⁵⁰ Network disclosure requirements are discussed in Computer II, 2 FCC Rcd at 150-151; 3 FCC at 23-24; and Computer III at 3 FCC Rcd at 1164-65. The Commission may waive a rule for good cause shown, in whole or in part, on the Commission's own motion or petition. 47 C.F.R. § 1.3. Regarding the waiver standard, see Wait Radio v. Federal Communications Commission, 418 F.2d 1153 (D.C. Cir. 1969); Northeast Cellular Telephone Co. v. Federal Communications Commission, 897 F.2d 1164 (D.C. Cir. 1990). See also Inmate Services Waiver Order 11 FCC Rcd at 8013 (granting a waiver of the network disclosure notice period to enable the provision of payphone services for inmate payphones before the required notice period).

tariffing of payphone services, on reconsideration we modify the federally tariffing requirement as discussed below.⁴⁹⁰ Accordingly, as required in the Report and Order, LECs must provide tariffed, nondiscriminatory basic payphone services that enable independent providers to offer payphone services using either instrument-implemented "smart payphones" or "dumb" payphones that utilize central office coin services, or some combination of the two in a manner similar to the LECS. LECs must file those tariffs with the state. In addition, as required by the Report and Order, any basic network services or unbundled features used by a LEC's operations to provide payphone services must be similarly available to independent payphone providers on a nondiscriminatory, tariffed basis. Those unbundled features or functions must be tariffed in the state and federal jurisdiction. Federal tariffing of unbundled network features is consistent with Computer III and ONA. The Commission has also required, for example, federal tariffing of originating line screening services.⁴⁹¹

163. We require LECs to file tariffs for the basic payphone services and unbundled functionalities in the intrastate and interstate jurisdictions as discussed below. LECs must file intrastate tariffs for these payphone services and any unbundled features they provide to their own payphone services. The tariffs for these LEC payphone services must be: (1) cost based; (2) consistent with the requirements of Section 276 with regard, for example, to the removal of subsidies from exchange and exchange access services; and (3) nondiscriminatory. States must apply these requirements and the Computer III guidelines for tariffing such intrastate services.⁴⁹² States unable to review these tariffs may require the LECs operating in their state to file these tariffs with the Commission. In addition, LECs must file with the Commission tariffs for unbundled features consistent with the requirements established in the Report and Order.⁴⁹³ LECs are not required to file tariffs for the basic payphone line for smart and dumb payphones with the Commission. We will rely on the states to ensure that the basic payphone line is tariffed by the LECs in accordance with the requirements of Section 276. As required in the Report and Order, and affirmed herein, all required tariffs, both intrastate and interstate, must be filed no later than January 15, 1997 and must be effective no later than April 15, 1997.

Where LECs have already filed intrastate tariffs for these services, states may, after considering the requirements of this order, the Report and Order, and Section 276, conclude: 1) that existing tariffs are consistent with the requirements of the Report and Order as revised herein; and 2) that in such case no further filings are required. We delegate authority to the Common Carrier Bureau to determine the least burdensome method for small carriers to comply with the

⁴⁹⁰ Section 276(c) also provides for the preemption of inconsistent state requirements.

⁴⁹¹ Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation, CC Docket No. 91-35, Third Report and Order (rel. Apr. 5, 1996) at para. 34.

⁴⁹² The new services test required in the Report and Order is described at 47 C.F.R. Section 61.49(g)(2). See also Amendments of Part 69 of the Commission's Rules Relating to the Creation of Access Charge Subelements for Open Network Architecture, CC Docket No. 89-79, 6 FCC Rcd 4524, 4531(1991) at paras. 38-44.

⁴⁹³ Report and Order at para. 146-148.

Finally, the PAO expressed its strong desire that the Commission issues its ruling in this matter without further delay.

We trust the Commission will find this information useful. Please contact me without hesitation should you have any further questions or requests for additional information pertaining to this matter.

Very truly yours,

Technology Law Group, L.L.C.

A handwritten signature in black ink, appearing to read "Neil S. Ende". The signature is fluid and cursive, with the first name "Neil" being more prominent.

Neil S. Ende

Alexandre B. Bouton

Greg Taylor

Counsel to the Payphone Association of Ohio

NSE/hs

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